Supreme Court, U.S.
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No. 90-1596

In the Supreme Court of the United States

OCTOBER TERM, 1991

F. DALE ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, THE UNITED STATES FOREST SERVICE, AND MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR, PETITIONERS

v.

SEATTLE AUDUBON SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON

No. 87-CV-1160

PORTLAND AUDUBON SOCIETY, ET AL.

v.

MANUEL LUJAN, ET AL.

DOCKET ENTRIES

Date	*NR*	*Proceedings*
1987		
OCT 19	1)	COMPLAINT for declaratory & inj relief
		* * * * *
DEC 18	35)	Deft's mot to dism with o/a req.
DEC 18	35a)	Memo in supp of the Secty of the Interior's mot to dism
		* * * * *
1988		
FEB 16	106)	Pltfs response to deft's mot to dism; o/a req.
		* * * * *

Date	*NR*	*Proceedings*
APR 20	132)	ORD: Mot of deft Donald Hodel to dism actn on grounds court lacks subject matter juris & ptlfs have failed to state claim for which relief can be granted GRANT s FR 4/20/88 ntfd
APR 20	133)	JUDGMENT Actn dism s FR 4/20/88 ntfd
		* * * * *
APR 21	137)	NOTC OF APPEAL Pltfs from judgment & ord 4/20/88
		* * * * *
MAY 23	143)	C/A ORD mot for emergency prelim inj deny in part & grant in part (see ord.) Appellee ord exped w/plts applts' brief file 6/15/88, appellee 6/30/88, reply 7/11/88 will be argued in SF 7/19/88, 10 am.
		* * * * *
1989		
JAN 31	149)	Pltf's renewed mot for s/j & for prelim inj OA REQ Exped consid req.
		* * * * *
FEB 3	152)	C/A ORD mandate in 88-3787, 3854, 3855 shall iss- vesting USDC with immediate juris to consid pltfs' application for inj relief. Pltfs' mot for an OSC why Bur of Land Mgmt should not be held in contempt refer to USDC. Pltfs' req c/a extend its stay Denied.

Date	*NR*	*Proceedings*
FEB 3	153)	C/A MANDATE jdgmt reversed in part, affirm in part & Remand No party recover cost ntfd

* * * * *

TERMED APPEAL

No. 87-CV-1160

PORTLAND AUDUBON SOCIETY, ET AL.

v.

MANUEL LUJAN, ET AL.

DOCKET ENTRIES

Date	*NR*	*Proceedings*
2/7/89	156	MOTION by plaintiffs for temporary restraining order & order to show cause why preliminary injunction should not issue (jp) [Entry date 2/8/89] [Edit date 2/21/89]
		* * * * *
2/8/89	165	ORDER granting motion for temporary restraining order & order to show cause why preliminary injunction should not issue [154-1] (see tro) Defts ordered to show cause why pltfs' renewed mot for prelim inj should not be granted on or before 2/17/89 at 10 am. Signed 2/8/89 microfilmed 2/10/89 Honorable Helen J. Frye (jp) [Entry date 2/10/89]
		* * * * *

Date	*NR*	*Proceedings*
2/17/89	222	RECORD OF HRG: on Pltf's renewed mot for prelim inj (1st day) Evid adduc, see separate list for witns & exhbts. ORD cont restraining ord til furth ord of court. Hrg cont to Wed, 2/22/89, 9:00 am. (ntfd c/d) Honorable Helen J. Frye (jp) [Entry date 2/24/89]
2/22/89	223	RECORD OF HRG: on pltf's renewed mot for prel inj (2nd day). Evid adduc. Hrg cont to 2/23/89, 9:00 am (ntfd c/d) Honorable Helen J. Frye (jp) [Entry date 2/24/89]
		* * * * *
2/23/89	224	RECORD OF HRG: on pltf's renewed mot for prelim inj (3rd day). Evid adduc. Court recess till 2/24/89, 9:00 am (ntfd c/d) Honorable Helen J. Frye (jp) [Entry date 2/24/89]
		* * * * *
2/24/89	229	RECORD of Prelim Inj Hrg: (4th day) Evid adduc. Iss re rebuttal witnesses taken U/A. Hrg cont to TUE, 2/28/89, 9 am. (ntfd c/d) Honorable Helen J. Frye (jp) [Entry date 2/27/89]
		* * * * *
2/28/89	232	RECORD OF HRG: On pltf's renewed mot for prelim inj (5th day). Evid adduc. Hrg adjourned. ORD extend

Date	*NR*	*Proceedings*
		TRO till court rules on the prel inj motion, (attys present) Honorable Helen J. Frye (jp) [Entry date 3/6/89]
		* * * * *
3/29/89	269	Opinion Pltfs' mot for prelim inj granted. Pltfs submit proposed ord. Mots s/j are set on court's calendar 4/24/89, 2:30 (ntfd) Signed 3/29/89 Honorable Helen J. Frye (jp) [Entry date 3/30/89]
		* * * * *
3/31/89	272	ORDER granting pltfs' motion for Preliminary Injunction (see inj) Defts Lujan et al "BLM" enjoined etc (see inj) ntfd Signed 3/31/89 microfilmed & ent 3/31/89 Honorable Helen J. Frye (jp)
		* * * * *
5/18/89	356	Opinion PAS renewed mot for s/j #149 Denied. BLM's mot s/j #161 grant. Prel inj shall be vacated & jgmt entered for BLM should prepare ap-prop docs. Signed 5/18/89 Honorable Helen J. Frye (jp)
5/18/89	357	ORDER pltfs' renewed mot for s/j #149 deneid, deft's mot for summary jgmt #161 granted. ntfd Signed 5/18/89 microfilmed & ent 5/18/89 Honorable Helen J. Frye (jp)

Date	*NR*	*Proceedings*
5/19/89	358	JUDGMENT: pltf's renewed mot for summary judgment Denied. Deft's s/j Granted The ORD grant prelim inj, which was issued by court 3/31/89, is vacated and the inj therein dissolved. Pltfs' complaint and action dismissed. ntfd Signed 5/19/89 microfilmed & ent 5/19/89 Honorable Helen J. Frye (jp)
5/19/89	359	Notice of appeal by plaintiff from Dist. Court decision [358-3] mailed info to cnsl & c/a 5/22/89 (jp) [Entry date 5/22/89]
		* * * * *
10/2/89	381	MANDATE-Judgment from US Court of Appeals 9th Circuit: affirm summary judgment fav of govt on NEPA claim & reversing and remanding pltfs' non-NEPA claims. The injunction pending appeal is vacated on the date of filing of this opinion. No party to recover costs in this court [Appeal [359-1]] (qsdr)
		* * * * *
11/3/89	394	RECORD OF ORD: granting motion to extend time to respond to pltfs' renewed mot for s/j [391-1] & [393-1]. Defts & intervenor-defts have till 11/22/89 to respond to the juridictional issues in order to resolve those matters before examination of the merits. Pltfs have till 12/6/89 to file a reply to the juris issues. OA will

Date	*NR*	*Proceedings*
		be on MON, 12/11/89, 3:00 pm only as to the juris issues. The court will not address the merits til the juris issues have been resolved. ORD deny Assn of O&C Counties, etc. motion at this time [392-1]. ORD striking date of 11/27/89 re pltf's mot for s/j [386-1]. Portions of the motion [386-1] is set for 12/11/89. (see above for time) ntfd Honorable Helen J. Frye (qsdr) [Entry date 11/8/89]
		* * * * *
11/9/89	397	MOTION by defendant Manuel Lujan to dismiss for mootness #397 (qsdr)
		* * * * *
12/11/89	416	RECORD OF HRG: defts' mots to dism #409 & 397 & pltf's renewed mot for s/j on juris iss #391. Motions are taken U/Advise except court ruled Section 318 is constitutional. ntfd. Honorable Helen J. Frye (qsdr) [Entry date 12/13/89]
		* * * * *
12/21/89	420	Opinion deft's mot to dism this action for mootnes [397] is Granted w/out prej to the filing of any new action challenging the BLM owl management activities after fiscal year 1990. Signed 11/21/89 microfilmed & eod 12/21/89 Honorable Helen J. Frye ntfd. (tely)

Date	*NR*	*Proceedings*
12/21/89	421	ORDER deft's mot to dism for mootness [397] is Granted w/out prejudice to the filing of any new action challenging the BLM owl management activities after fiscal year 1990. ntfd Signed 12/21/89 microfilmed & eod 12/21/89 Honorable Helen J. Frye (tely)
12/21/89	422	JUDGMENT: this act is dismissed w/out prejudice to the filing of any new action challenging the BLM owl management activities after fiscal year 1990. ntfd Signed 12/21/89 microfilmed & eod 12/21/89 Honorable Helen J. Frye (tely)
		* * * * *
1/30/90	456	Notice of appeal by plaintiffs from judgment entered 12/21/89 (#422) (qsdr) [Entry date 1/31/90]
		* * * * *
2/8/90	463	Opinion motion for inj pend appeal denied #428. (ntfd) Signed 2/8/90 Honorable Helen J. Frye (qsdr)
2/8/90	464	ORDER denying motion for injunction pending appeal [428-1] ntfd Signed 2/8/90 microfilmed & ent 2/8/90 Honorable Helen J. Frye (qsdr)
		* * * * *
9/26/90	493	MOTION by plaintiff for summary judgment #493-1, for permanent in-

Date	*NR*	*Proceedings*
		junction in re Hung Drury et al. Timber Sales #493-2 OA REQ (qsdr) [Entry date 10/01/90]
		* * * * *
9/28/90	492	Mandate from US Court of Appeals for the Ninth Circuit reversing decision of the District Court [Appeal [456-1] filed on 1/30/90, 90-35120 only (qsdr)
10/5/90	495	APPEAL ORDER & amended opinion on mandate #492 (app #90-35120 which was consol w/Seattle cs) Appellees' req to amd mandate construed as mot to amd opn which is granted. Opn filed 9/18/90 amd: pg 11801 of slip opn add after last sentence. The cases are remanded to Dist Courts for proceedings consistent w/this opn. This ord act as & for mandate these cases and the pend mot to recall mandate is denied. (see this ord) (qsdr)
		* * * * *
10/30/90	516	Opinion Mots to strike #499-1&2 granted. Mot to dism by certain intv's #506-1 granted. Intv's mot to stay #506-2 moot. (ntfd) Signed 10/30/90 Honorable Helen J. Frye (qsdr) [Entry date 10/31/90]
10/30/90	517	ORDER granting motion to strike [499-1] granting motion to dismiss for lack of subject matter juris [499-2] granting motion to dismiss

Date	*NR*	*Proceedings*
		[506-1] finding the motion to stay [502-2] moot. ntfd Signed 10/30/90 microfilmed & ent 10/31/90 Honorable Helen J. Frye (qsdr) [Entry date 10/31/90]
10/30/90	518	JUDGMENT: Action dism, ntfd Signed 10/30/90 microfilmed & ent 10/31/90 Honorable Helen J. Frye (qsdr) [Entry date 10/31/90]
11/9/90	519	MOTION by plaintiff to amend order and withdraw jugment [sic] #519 (qsdr) [Entry date 11/13/90)
		* * * * *
12/20/90	528	RECORD OF ORD: granting motion to amend order and withdraw jugment [sic] [519-1] ORD of court filed 10/30/90 vacated. and jgmt entered 10/30/90 vacated. Pltfs submit legal memo addressing issues of what clms remain to be litigated in this action & how those clms should be resolved by 1/4/91. Defts & intvs respond before 1/25/91 & pltf rply 2/1/91. Court will resolve issue of what clms remain & how those clms should be resolved. ntfd Honorable Helen J. Frye (qsdr)
1/3/91	530	MOTION by plaintiff for summary judgment and injunctive relief #530 OA REQ (qsdr) [Entry date 01/07/91]
		* * * * *

Date	*NR*	*Proceedings*
5/8/91	635	Opinion (see following ord same day) Signed 5/8/91 Honorable Helen J. Frye (qsdr)
5/8/91	636	ORDER Pltfs' mot for s/j & inj relief #530 denied. Deft's 2nd mot for s/j #554 granted as to pltfs' 2 & 4th clms for relief & denied as to pltfs' 3d clm for relief. Intvd Assoc of O&C & Benton County's mot to strike pltfs' stmt of undisputed facts #571 Denied. Intvd Assoc O&C & Benton County's mot for part s/j #585 granted as to pltfs' 2nd & 4th clms for relief & denied as to pltfs' 3rd clm for relief. Intvd NW Forest Resource Cncl's mot for s/j #589 granted as to pltfs' 2nd & 4th clms for relief & denied as to pltfs' 3d clm for relief. ntfd Signed 5/8/91 microfilmed & ent 5/8/91 Honorable Helen J. Frye (qsdr)
		* * * * *
5/23/91	639	MOTION by plaintiff for leave to file amended complaint #639 (qsdr)
		* * * * *
6/19/91	649	NOTICE OF APPEAL to Court of Appeals by plaintiff from order 5/8/91 #636 (qsdr) [Entry date 06/24/91]
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

No. 89-CV-160

SEATTLE AUDUBON SOCIETY, ET AL.

v.

ROBERTSON, ET AL.

DOCKET ENTRIES

Date	*NR*	*Proceedings*
2/8/89	1	COMPLAINT for declaratory & injunctive relief (Summons issued) (#156661) (ph) [Entry date 2/9/89]
2/9/89	2	MOTION by plaintiffs for preliminary injunction noted for 2/24/89 oral argument requested (ph) [Entry date 2/10/89]
		* * * * *
2/10/89	12	STIPULATION by defendants re award of certain timber sales (ph) [Entry date 2/13/89 [2:89cv160]
2/13/89	13	MOTION by defendant to change venue, and for stay of action on pltfs mtn for prelim inj noted for 3/3/89

Date	*NR*	*Proceedings*
		(ph) [Entry date 2/14/89] [2:89cv160]
		* * * * *
2/28/91	51	STIPULATION of defts re award of certain timber sales (ph) [Entry date 3/1/89] [2:89cv160]
		* * * * *
3/17/89	79	ORDER by Judge William L. Dwyer granting motion for temporary restraining order & order to show cause why prelim inj should not issue. setting hrg on motion for preliminary injunction, for 3:00 pm on 3/23/89 (cc: all counsel) (ph) [Entry date 3/21/89]
		* * * * *
3/23/89	99	MINUTE ENTRY: WLD; Dep Clerk: ES; CR: Vern Sorenson Oral arg on mtn for prelim inj. After oral arg, court grants pltfs mtn for prelim inj. Oral mtn by WCLA for change of venue is denied. Order to be issued. Final hrg set for 6/13/89 at 9:30 am. (ph) [Entry date 3/28/89]
3/24/89	97	ORDER by Judge William L. Dwyer granting pltfs renewed motion for preliminary injunction; denying change of venue; (cc: all counsel), Final hrg set for 9:30 on 6/13/89 (ph)
		* * * * *

Date	*NR*	*Proceedings*
3/27/89	100	TRANSCRIPT FILED—of oral decision of 3/23/89. CC all counsel. (ph) [Entry date 3/28/89]
3/27/89	101	SCHEDULING ORDER by Judge William L. Dwyer—defts answers due 4/10/89; designation of experts 4/10/89; designation & production of admin record 4/25/89; cnsl to confer & resolve scope of disc 4/10-4/12/89; briefs re scope of disc or of final hrg 4/14/89 by noon; conf w/ court if needed 4/17/89 or 4/18/89; disc 4/17-5/8/89; cross-mtns for s/j due 5/18/89; responses due 6/1/89; replies due 6/8/89; final hearing set for 6/13/89 at 9:30am (cc: all counsel) (ph) [Entry date 3/28/89]
		* * * * *
4/25/89	139	ORDER by Judge William L. Dwyer granting motion for order to add timber sales to prelim inj [114-1] ; sales listed in revised attachment A are added to list of sales subject to Order on Motions for Prelim Inj filed 3/24/89 (cc: all counsel) (ph)
		* * * * *
5/11/89	147	MOTION by defendant in 2:89-cv-00160 to stay proceedings (kh) [Entry date 5/15/89]
		* * * * *

Date	*NR*	*Proceedings*
5/18/89	161	STIPULATION and ORDER by Judge William L. Dwyer : time is shortened on dfts mtn for stay & protective order to 5/23/89 , the final evidentiary hrg is cont to 9:30 on 6/30/89, (cc: all counsel) (ph)
		* * * * *
5/26/89	173	ORDER by Judge William L. Dwyer granting motion to stay proceedings [147-1] the motion and briefing schedule is vacated, all proceedings herein are stayed until further order of the court (cc: all counsel, Judge, copies mailed out on 5/26/89) (md) [Entry date 6/1/89] [2:89cv160]
		* * * * *
8/24/89	178	MOTION by defendant in 2:89-cv-00160 for order for modification of the preliminary injunction noted for 9/8/89 (md) [2:89cv160]
8/24/89	179	NOTICE by defendant in 2:89-cv-00160 of intent to award sales (md) [2:89cv160]
		* * * * *
9/12/89	226	ORDER by Judge William L. Dwyer. The Stay of proceedings entered herein on 5/26/89 is lifted. The Forest Service's mot. to modify the prelim. injunction is consolidated with an expedited final hrg. on the merits. The final hrg will be resched-

Date	*NR*	*Proceedings*
		uled for the earliest date either in October or November, 1989. Cnsl are to file a joint scheduling proposal on or B4 9/19/89. A scheduling order will be entered following receipt of the report. The Ct. will decide in the final hrg. the issues originally raised as the spotted owl standards and guidelines set forth in the ROD. C to c, WLD. (kh) [2:89cv160]
		* * * * *
9/28/89	232	ORDER by Judge William L. Dwyer setting the following schedules: a telephone conf. of cnsl and the Ct. will be held @12:00 noon on 10/5/89 to review what discov. issues still need to be resolved. All discov. will be completed by 10/27/89. Any additional mots. will be filed by 10/5/89. On 10/19/89 the parties are to file descriptions of evidence that they intend to offer at the final hrg. On 10/30/89 @8:30 a.m. a pre-hrg. conf. will be held. On 11/6/89 the parties shall file lists of the exhibs. that they intend to offer. Final hrg briefs will be due on 11/8/89. By 8:30 a.m. on 11/13/89 cnsl will deliver to Clerk's office a list of all exhibs. to be offered to which no party objects. The final hrg. will be on

Date	*NR*	*Proceedings*
		11/13/89 @9:30 a.m. (cc: all counsel) (kh) [Entry date 9/29/89] [2:89cv160]
		* * * * *
10/19/89	257	MINUTE ORDER: * * * By close of business of 10/26/89, the parties are to file briefs stating their positions regarding the effect on these consolidated cases of the new legislation and the steps that should now be taken in these cases. Reply briefs will be due by Nov 2, 1989.
		* * * * *
11/6/89	277	ORDER by Judge William L. Dwyer Determining Section 318(b)(96)(A) of Act to be constitutional; a memorandum decision in regard to constitutionality will follow. The preliminary injunction entered in this action is hereby VACATED, and the parties will proceed in accordance with section 318. It would be untimely to hold a hrg at this point and the November 13, 1989 hearing date is hereby VACATED. A separate order will follow on whether the Ct. should now dismiss these cases or retain jurisdiction. See order for further details. (cc: all counsel) (kh) [Entry date 11/7/89]

Date	*NR*	*Proceedings*
11/14/89	278	ORDER by Judge William L. Dwyer; memorandum decision re constitutionality and retention of jurisdiction, the case will not be dismissed and the court will retain jurisdiction. A general stay of proceedings is not necessary or desirable. However, further discovery will be taken only by leave of court. (cc: all counsel) (md)
12/14/89	279	MOTION by plaintiff in 2:89-cv-00160 to stay pending appeal noted for 12/29/89 (md) [Entry date 12/15/89]
		* * * * *
12/22/89	286	MOTION by plaintiff Seattle Audubon Soci in 2:89-cv-00160 for order certifying the constitutionality of section 318(b)(6)(A) for interlocutory appeal noted for 1/12/90 (md) [Entry date 1/2/90]
		* * * * *
1/5/90	293	ORDER by Judge William L. Dwyer granting motion for order certifying the constitutionality of section 318(b)(6)(A) for interlocutory appeal [286-1] denying motion to stay pending appeal [286-1] denying motion to stay pending appeal [279-1] (cc: all counsel) (md)
1/5/90	299	NOTICE OF APPEAL by plaintiff Siuslaw Task Force in 2:89-cv-00160, plaintiff Oregon Natural Resou in 2:89-cv-00160, plaintiff Lane County

Date	*NR*	*Proceedings*
		Audubon in 2:89-cv-00160, plaintiff Portland Audubon Soc in 2:89-cv-00160, plaintiff Washington Native Pl in 2:89-cv-00160, plaintiff Pilchuck Audubon Soc in 2:89-cv-00160, plaintiff Washington Environment in 2:89-cv-00160, plaintiff Seattle Audubon Soci in 2:89-cv-00160, plaintiff Seattle Audubon Soci in 2:89-cv-00160 from Dist. Court decision entered 11/7/89 determining section 318(b)(96)(A) to be constitutional vacating the prelim. inj., and vacating hearing date of 11/13/89. [277-5] (cc: WLD, CCA, all counsel) (NS) [Entry date 1/8/90]
		* * * * *
1/30/90	322	ORDER by Judge William L. Dwyer denying motion to stay [312-1] (cc: all counsel) (md) [2:89cv160]
		* * * * *
9/27/90	589	MOTION by plaintiff Seattle Audubon Society for summary judgment and permanent injunction In Re: Six Timber Sales, Oral Argument requested noted for 10/19/90 (md) [Entry date 9/28/90] [2:89cv160]]
		* * * * *
9/27/90	593	MOTION (corrected) by plaintiff for summary judgment and permanent injunction In Re: Lower Sweet et al

Date	*NR*	*Proceedings*
		Timber Sales, oral argument requested noted for 10/19/90 (md) [Entry date 9/28/90] [2:89cv160]
9/27/90	594	MOTION (Corrected) by plaintiff for summary judgment and permanent injunction in Re The Sugarloaf, RED 90 and Marion 90 Timber Sales, Oral Argument Requested noted for 10/19/90 (md) [Entry date 9/28/90] [2:89cv160]
		* * * * *
10/ 1/90	607	ORDER by Judge William L. Dwyer granting defts motion to dismis pltfs motion for sj and permanent injunction in Re Six Timber Sales [602-1], denying pltfs motion for summary judgment and permanent injunction In Re: Six Timber Sales, Oral Argument requested [589-1] (cc: all counsel) (md) [2:89cv160]
		* * * * *
10/2/90	619	NOTICE OF APPEAL by plaintiff in 2:89-cv-00160 from Dist. Court Order, entered 10/2/90, granting deft. U.S. Forest Service's motion for summary judgment re: 6 timber sales. [607-1] (cc: WLD, CCA, all counsel) (NS) [2:89cv160]
		* * * * *
11/29/90	732	SECOND MOTION by plaintiff Seattle Audubon Society for summary judg-

Date	*NR*	*Proceedings*
		ment, declaratory relief and permanent injunction, oral argument requested noted for 12/21/90 (md) [Entry date 11/30/90] [2:89cv160]
		* * * * *
12/5/90	739	MOTION by defendants for summary judgment on second amended complaint noted for 12/28/90 (md) [2:89cv160]
		* * * * *
12/18/90	757	ORDER by Judge William L. Dwyer on motions heard Dec 5, 1990. The other motions heard on Dec 5 will be decided together with those noted for 1/11/91. (cc: all counsel) (md) [Entry date 12/20/90] [2:89cv160]
		* * * * *
3/7/91	824	ORDER by Judge William L. Dwyer on motions for sj and for dismissal: the motion of SAS for sj declaring unlawful the Forest Services proposal to log northern spotted owl habitat without complying with NFMA is granted. The agency's failure to date to comply, or begin compliance, with NFMA requirements is arbitrary and capricious, and not in accordance with law. The same motion in regard to NEPA is moot since NFMA directs that the NEPA procedures be followed. The motion in regard to

Date	*NR*	*Proceedings*
		MBTA is denied since that statute in inapplicable. The Forest Service's cross-motions on the same subjects are denied in part and granted in part accordingly. SAS's motion for sj determining that the DEC 1988 ROD violates the environmental statutes is denied because the ROD has been withdrawn. The Forest Service's cross-motion for a determination that no case or controversy exists is granted, and SAS's claims seeking relief as to the now-discarded ROD are dismissed without prejudice. The Forest Service's motion to dismiss WCLA's complaint, on the ground that no case or controversy presently exists, is granted, and that complaint is dismissed without prejudice. SAS's motion for sj as to five sales that were enjoined earlier under section 318 or were withdrawn by the Forest Service and are not currently proposed is denied without prejudice because no case or controversy is now present. HEARING AS TO INJUNCTIVE RELIEF SET FOR MARCH 12, 1991 at 8:00 a.m., 20 minutes per side. (cc: all counsel) (md) [Entry date 3/8/91] [2:89cv160]

* * * * *

Date	*NR*	*Proceedings*
4/1/91	867	ORDER by Judge William L. Dwyer evidentiary hearing set for 9:00 4/30/91, and on May 1-3 and 6-9, 1991. See Order For Further Details (cc: all counsel) (md) [Entry date 4/2/91] [2:89cv160]
		* * * * *
5/21/91	922	MOTION (renewed) by plaintiff Seattle Audubon Society for summary judgment and permanent injunction re Six Timber Sales noted for 5/24/91 (md) [Entry date 5/23/91] [2:89cv160]
		* * * * *
5/23/91	937	ORDER/MEMORANDUM DECISION AND INJUNCTION by Judge William L. Dwyer, The Forest Service is enjoined to proceed diligently in compliance with NFMA, as required by the order entered on 4/1/91 and to submit to the court and have in effect by 3/5/91 revised standards and guidelines to ensure the northern spotted owl's viability, together with an environmental impact statement, as required by NFMA and its implementing regulations. The agency is directed to submit to the court by 6/15/91 a timetable for completion of the steps to meet this schedule. The Forest Service is further enjoined from auctioning or awarding any ad-

Date	*NR*	*Proceedings*
		ditional timber sales from Forest Service Regions Five and Six that would log suitable habitat for the northern spotted owl, as defined above, until the said standards and guidelines are adopted and in effect. (cc: all counsel) (md) [Entry date 5/24/91] [2:89cv160]
		* * * * *
5/24/91	952	ORDER by Judge William L. Dwyer granting SAS's motion for summary judgment in re: Six Timber Sales [938-1] The Forest Service's cross-motion for sj is denied. SAS's motion for an injunction as to the Coon Skinner and High Spud Sales is denied (cc: all counsel) (md) [Entry date 5/26/91] [2:89cv160]
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-35020

SEATTLE AUDUBON SOCIETY; PILCHUCK AUDUBON SOCIETY; WASHINGTON ENVIRONMENTAL COUNCIL; WASHINGTON NATIVE PLANT SOCIETY; OREGON NATURAL RESOURCES COUNCIL, INC.; PORTLAND AUDUBON SOCIETY; LANE COUNTY AUDUBON SOCIETY; SIUSLAW TASK FORCE, PLAINTIFFS-APPELLANTS

v.

F. DALE ROBERTSON, IN HIS OFFICIAL CAPACITY AS CHIEF, UNITED STATES FOREST SERVICE; AND UNITED STATES FOREST SERVICE, AN AGENCY OF THE UNITED STATES, DEFENDANTS-APPELLEES

DOCKET ENTRIES

Date	*Proceedings*
1/12/90	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. setting schedule as follows: CADS due 1/26/90 for Victor M. Sher; appellant's designation of RT is due 1/16/90; appellee's designation of RT is due 1/25/90; appellant shall order tran-

Date	*Proceedings*
	script by 2/5/90; court reporter shall file transcript in DC by 3/7/90; certificate of record shall be filed by 3/14/90 ; appellant's opening brief is due 4/23/90; appellees' brief is due 5/23/90; appellants' reply brief is due 6/6/90; [90-35020] (ra) [90-35020]
1/22/90	Filed aplts' (Siuslaw Task Force, et al) emergency motion for a stay pending appeal or, [90-35020], in the alternative, for an expedited appeal; [90-35020] ; served on 1/18/90 to (CIVATT). [1704947] (jr) [90-35020]
1/24/90	Filed aplts' "Corrected Circuit Rule 27-3 Certificate"; served on 1/22/90 to (CIVATT). [90-35020] (jr) [90-35020]
1/26/90	Filed certificate of record on appeal RT filed in DC none [90-35020] (ra) [90-35020]
1/30/90	Filed aples' (US Forest Service, et al) opposition to motion for stay pending appeal; served on 1/29/90 to (CIVATT). [90-35020] (jr) [90-35020]
1/30/90	Filed Washington Contract Loggers Assoc's opposition to motion for a stay pending appeal, or in the alternative for an expedited appeal; served on 1/29/90 to (CIVATT). [90-35020] (jr) [90-35020]
1/30/90	Filed Todd D. True in 90-35020 Civil Appeals Docketing Statement served on 1/25/90 (to CONFATT) [90-35020] [90-35020] (ra) [90-35020]

Date	*Proceedings*
2/6/90	Filed order (GOODWIN, SCHROEDER, PREGERSON): Pursuant to the order entered on 2/2/89 in Portland Audubon v. Lujan, nos. 88-3787, 88-3854 and 88-3855, the appeal in Portland Audubon v. Lujan, no. 90-35120 wil be considered by this panel. The motion by the Dept. of Justice to refer no. 90-35020 and the petition under 28 USC 1292(b), no. 90-80008, to this panel is granted. Aplts' motion for emergency stay pending appeal filed in no. 90-35020 is denied. The Clerk shall consolidate no. 90-35020 with no. 90-35120, and the consolidated appeal is expedited. The CADS requirement is waived and the cases are released from the prebriefing conference program. The certificate of record shall be filed by 3/6/90. Aplts' brief shall be filed on or before 3/6/90. Aplts' reply brief, if any, shall be filed on or before 3/16/90. The parties shall be notified of a date and time for oral argument. The panel will consider the papers already filed in nos. 90-35020 and 90-80008 in addressing the merits of this consolidated appeal. The briefs in the consolidated appeal should supplement the papers already filed. The parties are advised that should the court determine that it lacks jurisdiction in no. 90-35020, and that it would be appropriate to grant the petition for permission to appeal in no. 90-80008, it may utilize the briefs filed in the consolidated appeal to

Date	*Proceedings*
	dispose of the appeal by permission without further briefing. [170494-1] [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]
2/15/90	Filed original and 15 copies Appellant Siuslaw Task Force, et al opening brief 25 pages, and five excerpts of record in 1 volumes, served on 2/13/90 [90-35020, 90-35120] (ra) [90-35020 90-35120]
2/22/90	Case released from Pre-Briefing Conference program. (tsp) [89-35844 90-35004 90-35020 90-35026 90-35036 90-35052 90-35060 90-35082]
3/6/90	Filed original and 15 copies appellee Asso. of O & C's 12 pages brief, 0 Exc. vols: ; served on 3/5/90 [90-35120, 90-35020] (dmf) [90-35020 90-35120]
3/7/90	Filed original and 15 copies appellee F. Dale Robertson, U.S. Forest Service in 90-35120, 90-35020, 29 pages brief; served on 3/7/90 [90-35120, 90-35020] (ra) [90-35020 90-35120]
3/8/90	Filed original and 15 copies appellee NFRC, Asso. of O & C in 90-35120, 90-35020's 36 pages brief, 0 Exc. vols; served on 3/6/90 [90-35120, 90-35020] (ra) [90-35020 90-35120]
	* * * * *
3/21/90	CALENDARED: San Francisco 4/3/90 10:00 a.m. Courtroom Ceremonial Ctrm. [90-35020, 90-35120, 90-80008] (dd) [90-35020 90-35120 90-80008]
	* * * * *

Date	*Proceedings*
3/26/90	Received F. Dale Robertson, et al additional citations, served on 3/23/90 (PANEL) [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]
4/3/90	ARGUED AND SUBMITTED TO: GOODWIN, SCHROEDER, PREGERSON [90-35020, 90-35120, 90-80008] (tsp) [90-35020 90-35120 90-80008]
	* * * * *
7/31/90	Received US Forest Service, et al additional citations, served on 7/27/90 (PANEL) [90-35020, 90-35120] (dmf) [90-35020 90-35120]
8/7/90	Filed aplts' (Seattle Audubon, et al) motion for a prompt disposition on these consolidated appeals; served on 8/6/90 to (panel). [1794675] [90-35020, 90-35120, 90-80008]
8/8/90	Filed Appellee NFRC, et al's opposition to motion for prompt disposition, served on 8/7/90 (PANEL) [90-35120, 90-35020, 90-80008] (dmf) [90-35020 90-35120 90-80008]
8/10/90	Filed Appellant Portland Audubon, Seattle Audubon reply to response to NFRC motion to expidite [*sic*] appeals ;served on 8/9/90 (PANEL). [90-35020, 90-35120, 90-80008] (mt) [90-35020 90-35120 90-80008]
9/18/90	FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. GOODWIN; SCHROEDER; PREGERSON,

Date	*Proceedings*
	author.) FILED AND ENTERED JUDGMENT. [90-35020, 90-35120] (ck) [90-35020 90-35120]
9/18/90	Filed, as of 1/26/90, certified record on appeal in 21 Vols. (total): 20 Clerks Rec 1 RTs (orig.) [90-35020] [90-35020] (tm) [90-35020]
9/21/90	Filed Appellant Seattle Audubon, et al's emergency motion for issuance of mandate or limited mandate. (PANEL via Civatt) [90-35020, 90-80008] ; served on 9/20/90 [1815272] (dmf) [90-35020 90-80008]
9/21/90	Received Appellee US Forest Service, et al letter dated 9/4/90 re: opposition to emergency motion for issuance of mandate; fax copy. (PANEL via Civatt) [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]
9/24/90	Filed order (GOODWIN,, SCHROEDER,, PREGERSON,): Appellants' emergency motion for issuance of the mandate is granted. Accordingly, the mandate shall issue forthwith [90-35020, 90-35120] (mt) [90-35020 90-35120]
9/24/90	MANDATE ISSUED [90-35020, 90-35120] (mt) [90-35020 90-35120]
9/24/90	[1818637] Filed in 90-35120, Original and 40 copies Appellee NFRC, Appellee Washington Contract in 90-80008 petition for rehearing with suggestion for rehearing en banc 14 p.pages, served on 9/24/90. (Rec'd in agency 9/27/90) (PANEL AND

Date	*Proceedings*
	ALL ACTIVE JUDGES) [90-35020, 90-35020, 90-35120, 90-80008] (ch) [90-35020 90-35120 90-80008]
9/24/90	Filed in 90-35120, Appellee NFRC, Appellee Washington Contract in 90-80008's opposition to emergency motion for issuance of mandate for limited mandate, served on 9/24/90t. (PANEL) [90-35120, 90-35020, 90-80008] (ch) [90-35020 90-35120 90-80008]
9/25/90	Filed Appellee Asso. of O & C and Benton Company motion opposing aplt emergency motion to issue the mandate immediate served on 9/21/90 (PANEL). [90-35120, 90-35020] (mt) [90-35020 90-35120]
9/25/90	Filed Appellee F. Dale Robertson in 90-35120 response opposing emergency motion [1815272-1] in 90-35120 served on 9/24/90 (PANEL. copy to case file with appear as a ltr., and is dated 9/21/90). [90-35020, 90-35120] (mt) [90-35020 90-35120]
9/26/90	Filed Appellee NFRC in 90-35120 emergency motion to recall the mandate. [90-35020, 90-35120] ; served on 9/25/90 (PANEL). (mt) [90-35020 90-35120]
10/1/90	Rec'd letter dated 9/28/90 from DC Judge William L. Dwyer (Seattle) requesting clarification of opinion filed 9/18/90. (PANEL) [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]

Date	*Proceedings*
10/2/90	Filed US Forest Service, F. Dale Robertson motion to recall the mandate with suggestion of en banc consideration. (PANEL & ACTIVE JUDGES) [90-35020, 90-35120, 90-80008] served on 10/1/90 [1820961] (dmf) [90-35020 90-35120 90-80008]
10/2/90	[1820964] Filed original and 40 copies Appellee US Forest Service, Appellee F. Dale Robertson petition for rehearing with suggestion for rehearing en banc (PANEL & ACTIVE JUDGES) 15 p.pages, served on 10/1/90 [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]
10/2/90	Filed order and amended opinion (Judges GOODWIN, SCHROEDER, author, PREGERSON) Aplees' request to amend this court's mandate is construed as a motion to amend our opinion. So construed the motion is granted. Our opinion filed 9/18/90 is hereby amended as follows: On page 11801 of the slip opinion, the following shall be added after the last sentence. The cases are remanded to the DC for proceedings consistent with this opinion. This order shall act as and for the mandate in these cases and the pending motion to recall the mandate is denied. (Orig. opinion id:) REVERSED [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]
10/2/90	Filed aplts' (Siuslaw Task Force, et al) opposition to emergency motion for recall of mandate and declaration of Todd True;

Date	*Proceedings*
	served on 10/2/90 to (panel). [90-35120, 90-35020, 90-80008] (jr) [90-35020 90-35120 90-80008]
10/4/90	Filed aplt's (Portland Audubon) opposition to emergency motion for recall of mandate; served on 10/2/90 to (panel). [90-35120, 90-35020, 90-80008] (jr) [90-35020 90-35120 90-80008]
10/5/90	Rec'd aplts' (Siuslaw Task Force, et al) letter dated 10/4/90 in response to Judge Dwyer's letter dated 9/28/90 to (panel). [90-35020, 90-35120, 90-80008] (jr) [90-35020 90-35120 90-80008]
10/9/90	Rec'd aplts' letter dated 10/5/90 in response to Judge Dwyer's letter to (panel). [90-35020, 90-35120, 90-80008] (jr) [90-35020 90-35120 90-80008]
10/11/90	Rec'd aple's (Washington Contract in 90-80008) letter dated 10/10/90 in response to Judge Dwyer's letter to (panel). [90-35020, 90-35120, 90-80008] (jr) [90-35020 90-35120 90-80008]
10/30/90	Filed order and amended opinion (Judges GOODWIN,, SCHROEDER, PREGERSON, author) (Orig. opinion id: [1813079-1] in 90-35020, 90-35120, [1825341-1] in 90-80008) The opinion filed 9/18/90 is amended as follows: (SEE CASEFILE FOR COMPLETE TEXT) [90-35020, 90-35120, 90-80008] (ck) [90-35020 90-35120 90-80008]

Date	*Proceedings*
12/18/90	Rcv'd from the Supreme Court a notice that the motion foor [*sic*] an extension of time in which to file a petition for writ of certiorari has been granted and is now due 2/15/91. [90-35020, 90-80008] (mt) [90-35020 90-80008]
1/16/91	Filed order (GOODWIN, SCHROEDER,, PREGERSON,): The motion for recall of the mandate and the petitions for rehearing are denied. The suggestions for rehearing en banc are rejected. in 90-35020, 90-35120 [90-35020, 90-35120, 90-80008] (mt) [90-35020 90-35120 90-80008]
	* * * * *
4/22/91	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 90-1596 filed on 4/12/91. [90-35020] (sf) [90-35020]
7/5/91	Received notice from Supreme Court, petition for certiorari GRANTED on 6/28/91 (PANEL) (sf) [90-35020]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-80008

WASHINGTON CONTRACT LOGGERS ASSOCIATIONS'S;
PLAINTIFF-APPELLEE

v.

SEATTLE AUDUBON SOCIETY; PILCHUCK AUDUBON SOCIETY; WASHINGTON ENVIRONMENTAL COUNCIL; WASHINGTON NATIVE PLANT SOCIETY; OREGON NATURAL RESOURCES COUNCIL, INC.; PORTLAND AUDUBON SOCIETY; LANE COUNTY AUDUBON SOCIETY; SIUSLAW TASK FORCE,
PETITIONERS

v.

F. DALE ROBERTSON, IN HIS OFFICIAL CAPACITY AS CHIEF, UNITED STATES FOREST SERVICE; AND UNITED STATES FOREST SERVICE, AN AGENCY OF THE UNITED STATES, RESPONDENTS

DOCKET ENTRIES

Date	*Proceedings*
1/17/90	RECEIVED ON 1/16/90 ORIGINAL AND 3 PETITIONS TO APPEAL PURSUANT TO RULE 1292(b); served on 1/15/90 (CIVATT) (el) [90-80008]

Date	*Proceedings*
1/30/90	Rec'd notice of appearance of Robert L. Klarquist, Esq. & Martin W. Matzen, Esq. as counsel of record for Resp, Robertson & US Forest Service. [90-80008] (ch) [90-80008]
1/30/90	Received in 90-80008, Respondent US Forest Service answer in opposition to the petition for permission to appeal (1292(b)) (CIVATT) (ch) [90-80008]
1/30/90	Filed in 90-80008, US Forest Service & F. Dale Robertson motion to hear case before same panel as case 90-35020 [90-80008] served on 1/29/90 (CIVATT) [1708954] (ch) [90-80008]
1/30/90	Filed aples' (US Forest Service, et al) opposition to motion for stay pending appeal; served on 1/29/90 to (CIVATT). [90-35020] (jr) [90-35020]
1/30/90	Filed Washington Contract Loggers Assoc's opposition to motion for a stay pending appeal, or in the alternative for an expedited appeal; served on 1/29/90 to (CIVATT). [90-35020] (jr) [90-35020]
1/30/90	Received in 90-80008, Appellee Washington Contract answer in opposition to the petition for permission to appeal (1292(b)) (CIVATT) (ch) [90-80008]
2/2/90	Received Petitioner Seattle Audubon's in 90-80008, reply memorandum in support of petition for permission to appeal, served on 2/2/90. (CIVATT) [90-80008] (ogm) [90-80008]

Date	*Proceedings*
2/6/90	Filed order (GOODWIN, SCHROEDER, PREGERSON): Pursuant to the order entered on 2/2/89 in Portland Audubon v. Lujan, nos. 88-3787, 88-3854 and 88-3855, the appeal in Portland Audubon v. Lujan, no. 90-35120 wil [*sic*] be considered by this panel. The motion by the Dept. of Justice to refer no. 90-35020 and the petition under 28 USC 1292(b), no. 90-80008, to this panel is granted. Aplts' motion for emergency stay pending appeal filed in no. 90-35020 is denied. The Clerk shall consolidate no. 90-35020 with no. 90-35120, and the consolidated appeal is expedited. The CADS requirement is waived and the cases are released from the prebriefing conference program. The certificate of record shall be filed by 3/6/90. Aplts' brief shall be filed on or before 2/13/90. Aplees' briefs shall be filed on or before 3/6/90. Aplts' reply brief, if any, shall be filed on or before 3/16/90. The parties shall be notified of a date and time for oral argument. The panel will consider the papers already filed in nos. 90-35020 and 90-80008 in addressing the merits of this consolidated appeal. The briefs in the consolidated appeal should supplement the papers already filed. The parties are advised that should the court determine that it lacks jurisdiction in no. 90-35020, and that it would be appropriate to grant the petition for permission to appeal in no. 90-80008, it may utilize the briefs filed in the consolidated appeal to

Date *Proceedings*

dispose of the appeal by permission without further briefing. [1704947-1] [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-35120

PORTLAND AUDUBON SOCIETY, ET AL.

v.

MANUEL LUJAN, ET AL.

DOCKET ENTRIES

Date	*Proceedings*
2/1/90	DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL. [90-35120] (dmf) [90-35120]
2/6/90	Filed order (GOODWIN, SCHROEDER, PREGERSON): Pursuant to the order entered on 2/2/89 in Portland Audubon v. Lujan, nos. 88-3787, 88-3854 and 88-3855, the appeal in Portland Audubon v. Lujan, no. 90-35120 wil [*sic*] be considered by this panel. The motion by the Dept. of Justice to refer no. 90-35020 and the petition under 28 USC 1292(b), no. 90-80008, to this panel is granted. Aplts' motion for emergency stay pending appeal filed in no. 90-35020 is denied. The Clerk shall consolidate no. 90-35020 with no. 90-35120, and the consolidated appeal is expedited.

Date *Proceedings*

The CADS requirement is waived and the cases are released from the prebriefing conference program. The certificate of record shall be filed by 3/6/90. Aplts' brief shall be filed on or before 2/13/90. Aplees' briefs shall be filed on or before 3/6/90. Aplts' reply brief, if any, shall be filed on or before 3/16/90. The parties shall be notified of a date and time for oral argument. The panel will consider the papers already filed in nos. 90-35020 and 90-80008 in addressing the merits of this consolidated appeal. The briefs in the consolidated appeal should supplement the papers already filed. The parties are advised that should the court determine that it lacks jurisdiction in no. 90-35020, and that it would be appropriate to grant the petition for permission to appeal in no. 90-80008, it may utilize the briefs filed in the consolidated appeal to dispose of the appeal by permission without further briefing. [1704947-1] [90-35020, 90-35120, 90-80008] (dmf) [90-35020 90-35120 90-80008]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. ____

PORTLAND AUDUBON SOCIETY, HEADWATERS, LANE COUNTY AUDUBON SOCIETY, OREGON NATURAL RESOURCES COUNCIL, THE WILDERNESS SOCIETY, SIERRA CLUB, INC., SISKIYOU AUDUBON SOCIETY, CENTRAL OREGON AUDUBON SOCIETY, KALMIOPSIS AUDUBON SOCIETY, UMPQUA VALLEY AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, PLAINTIFFS,

v.

DONALD HODEL, IN HIS OFFICIAL CAPACITY AS SECRETARY, UNITED STATES DEPARTMENT OF INTERIOR DEFENDANT.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTORY STATEMENT

1. This is an action for declaratory and injunctive relief. Plaintiffs challenge the decision of the Oregon Director of the Bureau of Land Management (BLM) to sell old-growth timber necessary for habitat for the northern spotted owl (strix occidentalis caurina) from BLM lands in the State of Oregon.

2. The action arises under and alleges violations of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Oregon & California Lands Act (OCLA), 43 U.S.C. § 1181, the Federal Lands Policy and

Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, the Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703 *et seq.*, and the Administrative Procedures Act (APA), 5 U.S.C. § 553 *et seq.*

3. Plaintiffs seek an order directing the defendant to halt imminent timber sales from stands older than 200 years within a 2.1 mile radius circle of known spotted owl habitat sites, including 289 sites identified on maps prepared by the BLM for analysis in the Spotted Owl Environmental Assessment (SOEA). Plaintiffs request that the proposed order remain in effect until the defendant prepares a supplementary Environmental Impact Statement (SEIS) which discloses the effects of defendant's destruction of old growth forests on spotted owl populations, and until the defendant complies with the Migratory Bird Treaty Act. Such an order is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment.

II. JURISDICTION AND VENUE

4. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question jurisdiction).

5. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e).

III. PARTIES

6. The plaintiffs in this action are:

A. Headwaters, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Headwaters' members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be

significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

B. Lane County Audubon Society (LCAS), a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. LCAS's members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

C. The Oregon Natural Resources Council (ONRC), a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters and natural resources. ONRC and its members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

D. The Wilderness Society (TWS), a national conservation organization. TWS devotes its resources to the preservation and proper management of America's public lands. Founded in 1935, TWS is a nonprofit organization with 170,000 members. TWS has its national headquarters in Washington, D.C., and eight regional offices—in Boston, Atlanta, Denver, Phoenix, Boise, San Francisco, Seattle and Anchorage. In each region, TWS staff members organize local citizens and conservation groups to assist government officials in making land use policy decisions. The Society also monitors federal actions affecting public land management, and staff members present information to federal agencies and Congress on a

wide range of land preservation issues. TWS members reside near BLM lands in Oregon, California and Washington State, and use and recreate on such lands. TWS' and its members' use and enjoyment of such lands and owl populations occurring on such lands will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

E. The Sierra Club, Inc., a non-profit corporation organized under the laws of the State of California. The Club's principal place of business is in San Francisco, California, and other offices located throughout the nation. The Club is a national conservation organization with over 400,000 members dedicated to protecting natural resources and the environment, including old-growth forests. The Club and its members use the contested areas of old growth forests on BLM lands for hiking, bird watching, aesthetic enjoyment, and other recreational activity. Their use and enjoyment of old-growth forests on BLM lands will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

F. Siskiyou Audubon Society, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Siskiyou Audubon Society and its members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

G. Central Oregon Audubon Society, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Central Oregon Audubon Society and

its members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

H. Portland Audubon Society, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Portland Audubon Society and its members use the contested areas of old-growth forests on BLM lands for hiking, bird watching, photography, aesthetic enjoyment, and other recreational activity. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

I. Salem Audubon Society, a non-profit organization incorporated in the State of Oregon. Salem Audubon Society and its members have a common interest in and a concern for birds and wildlife and the quality of the environment of the State of Oregon. Salem Audubon Society and its members use, live near, and recreate on BLM administered lands. They maintain an active interest in the preservation of Oregon's old-growth ecological system in general, the well-being of species dependent on such forest systems, and the state's populations of raptorial birds, including the northern spotted owl. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

J. Umpqua Valley Audubon Society, a non-profit organization incorporated in the State of Oregon. Umpqua Valley Audubon Society and its members have a common interest in and a concern for birds and wildlife and the quality of the environment of the State of Oregon.

Umpqua Valley Audubon Society and its members use, live near, and recreate on BLM administered lands. They maintain an active interest in the preservation of Oregon's old-growth ecological system in general, the well-being of species dependent on such forest systems, and the state's populations of raptorial birds, including the northern spotted owl. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

K. Kalmiopsis Audubon Society, a non-profit organization incorporated in the State of Oregon. The Kalmiopsis Audubon Society and its members have a common interest in and a concern for birds and wildlife and the quality of the environment of the State of Oregon. Kalmiopsis Audubon Society and its members use, live near and recreate on BLM administered lands. They maintain an active interest in the preservation of Oregon's old-growth ecological system in general, the well-being of species dependent on such forest systems, and the state's populations of raptorial birds, including the northern spotted owl. Their use of these areas and enjoyment of the spotted owl will be significantly and adversely affected by defendant's cutting of old-growth timber in suitable spotted owl habitat.

L. The Natural Resources Defense Council (NRDC), a national, non-profit organization dedicated to protecting and preserving the natural environment. NRDC has 55,729 members nationwide, including 1,015 members in Oregon. NRDC's members use and enjoy BLM old-growth lands for many purposes, including hiking and nature observation. Their use of these areas and enjoyment of the northern spotted owl will be significantly and adversely affected by defendant's cutting of old-growth forests in suitable spotted owl habitat.

7. The defendant in this action is the United States Secretary of the Interior, Donald Hodel. He is sued here in his official capacity as head of the agency whose actions are challenged. The Bureau of Land Management is an agency within the Department of the Interior.

IV. STATEMENT OF FACTS

8. Old-growth forests are distinctive and unique ecosystems. The most notable features of such forests are the massive Douglas-fir trees, with typical diameters of two to six feet and heights of 150 to 270 feet. Other structural features of old growth ecosystems include standing dead trees and downed logs. The structural features of old-growth forests provide important wildlife habitat, a source of nutrients for streams and saprophytic fungi, and magnificent settings for recreational pursuits of all kinds. A more detailed description of the characteristics of old-growth ecosystems is included in Exhibit A, attached. Old-growth ecosystems take at least two hundred years to develop. Once cut, they are irretrievably lost for our generation, our children's generation, and their children's generation.

9. Much of the past and on-going research regarding the old-growth forest ecosystem has focused on one of its residents, the northern spotted owl. The spotted owl is regarded by biologists as a "management indicator species," and its fate is presumed to be an indication of the fate of the entire assemblage of species dependent upon old-growth forests. The concerns regarding the risks of extinction faced by the spotted owl also apply to other wildlife species which depend upon or find their optimum habitat in old-growth forests. Exhibit A, attached.

10. Between 1979 and 1983, defendant formulated decadel Timber Management Plans (TMP's), for each of its seven western Oregon districts. Those TMP's were

accompanied by seven separate Environmental Impact Statements (EIS's). The limited information reviewed by the BLM in those EIS's indicated that the logging of old-growth forests would result in a decline in the number of spotted owls on defendant's lands in western Oregon. *See* Exhibit B, attached.

11. A number of scientific studies have been released since the time that BLM completed the EIS's for its seven western Oregon districts. These studies contain significant new information concerning the northern spotted owl. They include: (1) a status review of the northern spotted owl by the United States Fish and Wildlife Service (1982); (2) a draft supplemental EIS prepared by the United States Forest Service, analyzing the habitat requirements of the northern spotted owl (1986); (3) a study of the northern spotted owl undertaken by a Blue Ribbon panel of respected scientists for the National Audubon Society (1986); (4) an anlysis of the population demographics of the northern spotted owl by Dr. Russell Lande (1985 and 1987); and (5) a northern spotted owl analysis prepared by a team of defendant's own biologists (May 8, 1986, and January 16, 1987). In addition to these studies, a number of other research projects have generated significant new information about the northern spotted owl.

12. On March 8, 1984, Assistant Secretary of Agriculture Douglas MacCleery ordered Region VI of the Forest Service to prepare a supplemental EIS on the effects of old-growth destruction on the northern spotted owl. That decision was based on the fact that significant new information had been developed on the spotted owl since the Forest Service released its original EIS discussing the northern spotted owl on June 14, 1984. This new information included, *inter alia*, the information provided by Dr. Russell Lande. *See* Exhibit C, attached.

13. On February 3, 1987, the Oregon State Director of the BLM issued a Spotted Owl Environmental Assessment (SOEA), which purported to review the significance of new information concerning the habitat requirements of the spotted owl. The SOEA, however, did not analyze or discuss any of the new information contained in the many studies of the northern spotted owl that have been released since the completion of the district EIS's. *See* Exhibit D, attached.

14. In a Decision Notice dated April 10, 1987, the Oregon State of the BLM decided to continue logging old-growth forests as proposed in the original TMP's. The Director decided not to supplement the EIS's because he deemed the new information regarding the effects of logging old-growth on the spotted owl "not significant." *See* Exhibit E, attached. As a result of the Director's decision, old-growth forests on BLM lands in western Oregon will be logged at a rate that will foreclose defendant's ability to provide meaningful protection for the northern spotted owl and other old-growth dependent species. New resource management plans scheduled for 1990 will be too late to stop the irreversible effects of current old-growth forest destruction. *See* Exhibit F, attached.

15. On July 24, 1987, the United States Fish & Wildlife Service (USFWS) decided to formally consider the northern spotted owl for placement on the endangered species list. *See* Exhibit G, attached. In 1982, the USFWS had refused to consider the owl for listing. *See* Exhibit H, attached. The change in the USFWS position was based in part on the significant new information plaintiffs have urged defendant to consider, and the USFWS decision itself is significant "new information."

16. In March 1983, the defendant adopted a "Forest Resources Policy Statement" (FRPS). *See* Exhibit I, attached. The FRPS dictates defendant's management of

forest resources on BLM lands affected by the Oregon and California Lands Act (OCLA), 43 U.S.C. § 1181. The FRPS requires that all lands classified as suitable for timber production shall be managed for timber and wood product production, to the maximum extent possible under the law. Suitable lands can be used for purposes other than timber production only if those other uses are specifically set forth in the OCLA. Because defendant has interpreted the OCLA as not including the protection of wildlife or habitat (except as required by the Endangered Species Act), the FRPS prohibits the withdrawal of suitable timberlands to protect wildlife or habitat not specifically listed under the Endangered Species Act.

17. The Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703 *et seq.*, prohibits the killing of any migratory bird by any means or in any manner, unless under the authority and to serve the purposes of the MBTA. The MBTA effectuates the purposes of treaties between the United States and Great Britain (on behalf of Canada), Mexico and Japan, and other purposes. The northern spotted owl is a migratory bird protected by the MBTA. *See* 50 C.F.R. § 10.13.

18. Logging of old-growth forests kills northern spotted owls by destroying their habitat. Such logging is a major cause of the decline of the northern spotted owl population and is likely to lead to the ultimate extinction of the species. *See* Exhibits F, J, and K, attached.

V. ADMINISTRATIVE PROCEEDINGS

19. The Oregon State Director of the BLM issued a decision on April 10, 1987, not to prepare a supplemental EIS on the effects of destruction of old-growth forests in suitable spotted owl habitat. *See* Exhibit E, attached.

20. On June 10, 1987, plaintiffs appealed the Director's decision to the Interior Board of Land Appeals

(IBLA), and requested that the IBLA immediately stay all sales of timber from stands older than 200 years within 2.1 mile radius circles identified on maps prepared by the defendant for each of the 289 known spotted owl habitat sites analyzed in the defendant's Spotted Owl Environmental Assessment (SOEA). The stay was necessary to preserve the status quo, to prevent illegal agency action, and to prevent further irreparable injury to the environment.

21. On July 1, 1987, the IBLA denied the plaintiffs' request for stay. The Board based its denial solely on the ground that plaintiffs had failed to show a substantial threat of irreparable injury because the record was silent as to any specific proposed timber sales that would affect the spotted owl.

22. On September 4, 1987, plaintiffs filed a renewed request for stay with the IBLA. Plaintiffs attached a list of all currently planned old-growth sales that the defendant had scheduled for offer in the next three years within a 2.1 mile radius of known spotted owl habitat sites. *See* Exhibit L, attached. In addition, plaintiffs requested a stay of all planning for timber sales, including site selection and the initiation of environmental assessments, for old-growth stands as described above, unless defendant first prepared an EIS with respect to such sales.

23. Due to the immediate and irreparable effects on the northern spotted owl and old growth ecosystems of defendant's proposed sales, plaintiffs advised the IBLA that they would view the Board's failure to act on the renewed stay request within 20 days as a denial of their request. As of the date of filing this Complaint, 20 days have expired and the IBLA has failed to act on plaintiff's renewed stay request.

24. Between October 26 and December 31, 1987, defendant will offer 15 timber sales covering at least 1,151

acres of old-growth forests in known spotted owl habitat sites. These sales are the Lower Carnegie, Anchor Ranch, Wood Creek, and South Williams sales on the Medford District; Cougar Creek, King Creek, Lower Burnt Mountain, Brads Creek, and South Camas Valley on the Roseburg District; Long Bench II, White Wall II, and South fork Crab sales on the Salem District; and the Vaughn's Park sale on the Coos Bay District. *See* Exhibit L.

VI. CLAIMS FOR RELIEF

COUNT I

25. Defendant's destruction of old-growth forests within suitable northern spotted owl habitat sites constitutes a major federal action affecting the quality of the human environment under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

26. Defendant's destruction of old-growth forests in suitable spotted owl habitat causes cumulative, synergistic, and indirect effects that have not been examined in an adequate NEPA document.

27. Significant new information regarding the habitat requirements of the northern spotted owl has been developed since the preparation of defendant's Timber Management Plan EIS's. The decision of the director of the BLM in Oregon to proceed with continued destruction of old-growth forests in suitable spotted owl habitat, without preparing a supplemental EIS which considers significant new information regarding the effects of such destruction on the northern spotted owl, violated NEPA and 40 C.F.R. § 1502.9(c) and is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(D).

COUNT II

28. Defendant's Forest Resources Policy Statement precludes defendant from withdrawing lands otherwise

suitable for commercial logging in order to provide habitat for the northern spotted owl. This violates the O&C Lands Act (OCLA), 43 U.S.C. § 1181(a) and is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(A).

COUNT III

29. Defendant's Forest Resources Policy Statement violates the multiple-use mandate of the Federal Lands Policy and Management Act, 43 U.S.C. § 1701 *et seq.*, and is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(A).

COUNT IV

30. The destruction of old-growth forests on defendant's lands kills northern spotted owls. This violates the Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703 *et seq.*, and is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(A).

VII. PRAYER FOR RELIEF

31. Plaintiffs respectfully request that the Court:

A. Declare that defendant's sales of old-growth timber in suitable spotted owl habitat without a supplemental EIS examining, *inter alia*, new information on the northern spotted owl, violated NEPA and 40 C.F.R. § 1502.9(c).

B. Declare that the defendant's Forest Resources Policy Statement is contrary to the Oregon and California Lands Act and the Federal Lands Policy and Management Act.

C. Declare that sales of old-growth timber which result in the death of northern spotted owls violate the Migratory Bird Treaty Act.

D. Declare that defendant's actions as set forth above are not in accordance with law, contrary to 5 U.S.C. § 706(2)(A).

E. Declare that defendant's actions as set forth above are not in compliance with procedures required by law, contrary to 5 U.S.C. § 706(2)(D).

F. Enjoin defendant from offering the old-growth sales identified in paragraph 24, above, unless and until defendant complies with NEPA, OCLA, FLPMA, and the MBTA.

G. Enjoin defendant from offering any additional sales of old growth forest within a 2.1 mile radius of known spotted owl habitat sites unless and until defendant complies with NEPA, OCLA, FLPMA, and the MBTA.

H. Award plaintiffs their reasonable fees, costs, expenses, and disbursements associated with this litigation.

I. Grant plaintiffs such additional and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ MICHAEL AXLINE
Michael Axline

/s/ JOHN E. BONINE
John E. Bonine
Attorneys for Plaintiffs
Lane County Audubon Society,
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Legal Interns:
Lorelei Bensel
Peter James
Richard Mietz
William Young

Dated this 19th day of October, 1987.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Civil Action No. C89-160

SEATTLE AUDUBON SOCIETY, A NON-PROFIT CORPORATION; WASHINGTON ENVIRONMENTAL COUNCIL, A NON-PROFIT CORPORATION; WASHINGTON NATIVE PLANT SOCIETY, A NON-PROFIT CORPORATION; PILCHUCK AUDUBON SOCIETY, A NON-PROFIT CORPORATION; NATIONAL AUDUBON SOCIETY, A NON-PROFIT CORPORATION; PORTLAND AUDUBON SOCIETY, A NON-PROFIT CORPORATION; LANE COUNTY AUDUBON SOCIETY, A NON-PROFIT CORPORATION; OREGON NATURAL RESOURCES COUNCIL, A NON-PROFIT CORPORATION; AND SIUSLAW TASK FORCE, A NON-PROFIT CORPORATION, PLAINTIFFS

v.

F. DALE ROBERTSON, IN HIS OFFICIAL CAPACITY AS CHIEF, UNITED STATES FOREST SERVICE; AND UNITED STATES FOREST SERVICE, AN AGENCY OF THE UNITED STATES, DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action for a declaratory judgment and injunctive relief. Plaintiffs challenge Forest Service Chief F. Dale Robertson's December 8, 1988, decision to continue logging forest habitat for the northern spotted owl for an

additional five years, even though the entire responsible scientific community agrees that the owl faces extinction from further loss of its habitat. Chief's Robertson's Record of Decision ("ROD") is attached hereto as Exhibit A.

2. This action arises under and alleges violations of the National Forest Management ACT ("NFMA"), 16 U.S.C. § 1600 *et seq.*, and its implementing regulations, 36 C.F.R. § 219 *et seq.*, the Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703 and its implementing regulation, 50 C.F.R. § 10 *et seq.*, the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 501 *et seq.*

3. For the violations of NEPA, plaintiffs seek an order directing the Forest Service to prepare an adequate environmental impact statement for the decision to continue logging spotted owl habitat for five more years and an injunction against further sales as described in para. 6, *infra*, until the Forest Service prepares such an EIS.

4. For the violations of the NFMA and its implementing regulations, plaintiffs seek an order directing the Forest Service to prepare a regional plan which insures the long-term viability of the northern spotted owl and an injunction against further sales as described in para. 6, *infra*, until the Forest Service prepared such a plan.

5. For the violations of the MBTA, plaintiffs seek an order prohibiting defendants from taking, killing, or otherwise harming, owls and/or their habitat without first complying with the requirements of the MBTA and its implementing regulations.

6. Until the Forest Service complies with the requirements of NEPA, the NFMA and the MBTA, plaintiffs seek an injunction against the award of any contract for the sale and logging of timber from the Mount Baker-Snoqualmie, Olympic, Wenatchee, Gifford Pinchot,

Okanogan, Mt. Hood, Siuslaw, Willamette, Umpqua, Siskiyou, Rogue River, Deschutes and Winema National Forests that will log more than forty (40) acres of suitable nesting or foraging habitat for northern spotted owls.

7. This relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment and plaintiffs' interests.

JURISDICTION AND VENUE

8. Jurisdiction over this action is conferred by 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief); and the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*

9. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) as the cause of action arises in this district and many of the plaintiffs reside within the district.

PARTIES

10. The plaintiffs in this action are:

A. Seattle Audubon Society, a registered Washington non-profit corporation with its principal place of business in Seattle, Washington, dedicated to protecting, conserving, and enjoying Washington's wildlife and other natural resources. Seattle Audubon Society's approximately 4,500 members live in western Washington.

B. Washington Environmental Council (WEC), a registered Washington non-profit corporation with its principal place of business in Seattle, Washington, dedicated to protecting, conserving, and enjoying Washington's wildlife and other natural resources. WEC is a coalition of both organizations and individual members. WEC's members live in Washington State.

Washington Native Plant Society ("WNPS"), a registered Washington non-profit corporation dedicated to conserving and protecting Washington State's native flora

and fauna with its principal place of business in Seattle, Washington.

D. Pilchuck Audubon Society, a registered Washington non-profit corporation with its principal place of business in Everett, Washington, dedicated to protecting, conserving, and enjoying Washington's wildlife and other natural resources. Pilchuck Audubon Society's approximately 800 members live in and around Everett, Washington.

E. National Audubon Society ("NAS"), a New York non-profit corporation with its place of business in the state of Washington at 517 S. Washington, Olympia, WA 98501. NAS has approximately 500,000 members nationwide, of which about 10,000 to 12,000 reside in Washington State. NAS is an environmental organization committed to promoting, maintaining and improving environmental quality, and preserving and protecting wildlife habitat.

F. Portland Audubon Society, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Portland Audubon Society's approximately 5,000 members live in and around Portland, Oregon.

G. Lane County Audubon Society, a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters, and natural resources. Lane County Audubon Society's members live in Lane County, Oregon.

H. The Oregon Natural Resources Council (ONRC), a registered Oregon non-profit corporation dedicated to protecting and conserving Oregon's wildlife, lands, waters and natural resources. ONRC's approximately 2,800 members live in Oregon.

I. The Siuslaw Task Force ("STF"), a registered Oregon non-profit corporation dedicated to protecting and conserving the Oregon Coast Range's wildlife, lands,

waters and natural resources. STF's several hundred members live in and around Oregon Coast Range.

10. Plaintiffs and their members use old-growth forests, the habitat of northern spotted owls, for birding, wildlife observation, nature photography, aesthetic enjoyment, and other recreational and educational activities. In addition, the organizations and their members derive scientific, recreational, aesthetic and conservational benefit and enjoyment from the existence in the wild of the northern spotted owl. These interests will be irreparably damaged if defendants permit the destruction by logging of northern spotted owl habitat and thus fail to preserve the owl's viability.

11. The above-described aesthetic, conservational, recreational, scientific and wildlife preservation interests of plaintiffs and their respective members, have been, are being, and, unless the relief prayed herein is granted, will continue to be adversely affected and irreparably injured by the logging of northern spotted owl habitat and the refusal of defendants to prepare an adequate plan for the protection of the northern spotted owl, as required by law.

12. The defendants in this action are:

A. F. Dale Robertson, Chief of the United States Forest Service. He is sued here in his official capacity.

B. The United States Forest Service, an agency of the United States.

FACTS

13. The northern spotted owl is an interior forest bird that uses old growth forests for foraging, roosting, and nesting. The historical range of the northern spotted owl extended throughout old-growth coniferous forests from southwestern British Columbia through western Washington and Oregon, and the Coast Range of California to the San Francisco Bay Area. The owl's current distribution is similar to its historic range to the extent that

old-growth forested habitat for the owl remains. However, the owl has already been extirpated or is uncommon in some areas, such as the Olympic Peninsula in Washington and northwestern Oregon, as a result of old-growth habitat destruction due primarily to logging and fires.

14. The northern spotted owl depends on old-growth forests for its habitat. The amount of old-growth forest has declined significantly in the past century, largely as a result of logging. Because its habitat is being destroyed by human activities, primarily logging, the owl faces a serious risk of extinction. The scientific record regarding this risk reflects the following expert opinions, among others:

a. Dr. Mark Shaffer, a U.S. Fish and Wildlife Service's expert on population viability, reviewed the best scientific data on the fate of the spotted owl and concluded:

> the most reasonable interpretation of current data and knowledge indicate continued old growth harvesting is likely to lead to the extinction of the subspecies in the foreseeable future which argues strongly for listing the subspecies threatened or endangered at this time.

Exhibit B, attached hereto.

b. A peer review of Dr. Shaffer's analysis by Dr. Michael Soule, one of the world's leading experts on species extinction, concluded:

> I completely concur with your conclusions, and the methods by which you reached them. The more one hears about *Strix occidentalis caurina,* the more concern one feels. Problems with the data base and in the models notwithstanding, and politics notwithstanding, I just can't see how a responsible biologist could reach any other conclusion than yours.

Exhibit C, attached hereto.

c. Dr. Bruce Wilcox, Director of the Center for Conservation Biology at Stanford University, and a leading expert on problems of species extinction also reviewed Dr. Shaffer's analysis. According to Dr. Wilcox:

> The data are at least sufficient to indicate that this bird is dependent on a fairly well defined habitat type, and that the amount of habitat it needs to insure a reasonable likelihood of persistence must be close to the amount currently remaining. This is the most reasonable interpretation of the existing data and its analysis. I do not believe improvements in theory and analysis will change this conclusion.
>
> Add to this, however, continued pressures on, and plans to fell additional old growth, and there is little doubt in my mind that the owl is at least at imminent risk of becoming endangered. And if this subspecies is not at least slipping toward endangerment now, by the time enough additional data are available to significantly narrow the confidence limits on the estimated requirements for viability, it most certainly will be.

Exhibit D, attached hereto.

d. Dr. Russell Lande, Associate Professor of Ecology and Evolution at the University of Chicago, has published the only analysis of the owl's risk of extinction in a peer-reviewed scientific journal. Dr. Lande concludes:

> . . . extinction will result if the old forest is reduced to less than a proportion of 0.21 of the total area in a large region. The estimated minimum habitat requirement for the population is greater than that allowed in management plans by the USDA Forest Service. . . . With continued reduction of old forest by logging, from the current proportion of about 38% to something in the range of 7% to 16% under the plan

> preferred by the Forest Service, it should be expected that . . . spotted owls will decline until the population is extirpated from the region. This analysis . . . indicates that only a plan involving preservation of the great majority of the remaining old-growth forest . . . is likely to promote long-term persistence of the northern spotted owl population.

Exhibit E, attached hereto (accompanied by peer review letters by Dr. George Barrowclough of the American Museum of Natural History and Dr. Mark Shaffer of the U.S. Fish and Wildlife Service).

e. Dr. Gordon Orians (Professor of Zoology and Environmental Studies at the University of Washington and a leading expert in avian ecology) and Dr. Paul Ehrlich (Bing Professor of Population Studies at Stanford University, author of *Extinction: The Causes and Consequences of the Disappearance of Species* and one of the world's experts on evolution and the processes of extinction) both:

> agree with Dr. Lande's assessment that past logging of old forest that provides habitat for the northern spotted owl has jeopardized the continued existence of this bird. Further harvesting of old forest increases the risk of extinction and reduces the management options available for protecting the owl.

Exhibits F and G, attached hereto.

15. There can be no question but that the spotted owl's viability is threatened as a result of habitat destruction.

16. Continued logging of owl habitat will result in deaths of or injuries to individual spotted owls and declining owl populations.

ADMINISTRATIVE HISTORY

17. In May, 1984, then Forest Service Chief R. Max Peterson adopted the Pacific Northwest Regional Guide ("Guide"), pursuant to 36 C.F.R. § 219.8. Among other things, the Guide adopted a plan for the management of northern spotted owl habitat.

18. On October 14, 1984, plaintiffs Oregon Natural Resources Council and Lane County Audubon Society (and two other conservation organizations) administratively appealed Chief Peterson's spotted owl habitat management plan ("1984 appeal"). Exhibit H, attached hereto. The 1984 appeal asserted that the Regional Guide failed "to disclose and consider the cumulative and synergistic environmental impacts of timber harvesting in Region VI old growth areas, and particularly the effects of such harvesting on the Northern Spotted Owl (Strix Occidentalis Caurina)." Exhibit H at 1.

19. On March 8, 1985, the Department of Agriculture reversed the Chief's Regional Guide decision as it related to spotted owls and remanded to the Pacific Northwest Regional Forester for preparation of a supplemental Environmental Impact Statement ("EIS") addressing alternatives for management of the owl's habitat.

20. In the summer of 1986, the Forest Service released a Draft Supplemental EIS ("DSEIS") for public comment. The Service received over 40,000 comments, including several from qualified experts and wildlife agencies. Exhibit I, attached hereto. In the summer of 1988, the Forest Service published a final Supplemental EIS ("FSEIS"). The Service again solicited public comment.

21. The scientific community and wildlife agencies uniformly criticized the Forest Service's preferred alternative in the FSEIS. For example, the U.S. Fish and Wildlife Service stated:

> The Forest Service's proposed action for owl management (regardless of which alternative may be selected) has never been field tested. There are few empirical data which indicate that the proposed "patch" or "island" concept of owl management may be successful in maintaining a viable owl population. The northern spotted owl evolved in a nearly continuous forested environment where occasional small and isolated unforested patches resulted from natural events such as fire and windfall, but few data substantiate that the species can successfully adapt to the reverse situation. The patches may be difficult to find and may provide habitat of insufficient quality or size to support successful breeding pairs of spotted owls. Current knowledge of average home range size and other life history parameters lead to questions regarding the patch-type of concept. . . .
>
> *The preferred alternative (F) may not singularly provide for an adequate amount of suitable owl habitat either during or beyond the 15-year planning period to confidently predict the continuation of a rangewide, viable owl population.*

Exhibit J at 2 (emphasis added), attached hereto.

22. Similarly, the California Department of Fish and Game commented:

> Getting right to the point, we were disappointed to see that the preferred option (Alternative F) does not provide a better guarantee for the long-term viability of Spotted Owls. We do not believe that this alternative adequately considers the current biological information nor does it provide any buffer which adequately would protect populations from known but unpredictable catastrophic losses.

Exhibit K at 1, attached hereto.

23. The Washington Department of Wildlife reiterated the theme voiced by the scientific community and wildlife agencies:

> It is our opinion, based on best available data, that implementation of Alternative F on Washington forests would likely lead to the extirpation of the northern spotted owl in Washington.

Exhibit L at 1, attached hereto.

24. On December 8, 1988, defendant Forest Service Chief F. Dale Robertson issued the ROD which adopted, with insignificant modifications, the Forest Service's Preferred Alternative (F) from the FSEIS for management of the northern spotted owl's habitat. Exhibit A.

25. The ROD claims that "planned timber harvest [pursuant to the ROD] will not so fragment the [owl's] habitat as to preclude options to increase the long-term level of protection provided in future years should new information show that is necessary." Exhibit A at 4. Nonetheless, at the end of the 5 years covered by the ROD, planned timber harvest will have reduced spotted owl habitat by at least 4.5 percent. Exhibit A at 4.

26. On January 23, 1989, plaintiffs filed an administrative NOTICE OF APPEAL of Chief Robertson's ROD. Exhibit M, attached hereto. The NOTICE OF APPEAL was filed with the Secretary of Agriculture, pursuant to 36 C.F.R. § 211.18. With the NOTICE OF APPEAL, plaintiffs filed a STATEMENT OF REASONS, incorporating substantially the arguments raised in this lawsuit. Exhibit N, attached hereto.

27. On February 3, 1989, the Secretary of Agriculture exercised his discretion not to review plaintiffs' administrative appeal. Exhibit O, attached hereto. Thus plaintiffs' administrative remedies have been exhausted.

THE FURTHER LOSS OF OWL HABITAT AUTHORIZED BY THE ROD JEOPARDIZES THE LONG-TERM VIABILITY OF THE NORTHERN SPOTTED OWL AND WILL REDUCE THE OWL'S POPULATION.

28. There is no scientifically credible basis for the ROD's assertion that the spotted owl's viability is not

jeopardized by additional habitat destruction. In fact, the most comprehensive and up-to-date analyses by leading scientists prove the opposite.

a. Mr. Daniel Doak, a doctoral candidate at the University of Washington Zoology Department and a specialist in population viability studies and the application of mathematics to ecological questions, has recently completed a study of the population viability of the northern spotted owl entitled "Spotted Owls and Old Growth Logging in the Pacific Northwest," and submitted to *Conservation Biology* for publication.

Based on this study, Mr. Doak point out:

> The critical and immediate issue is whether five additional years of logging spotted owl habitat, as proposed by the Forest Service in the ROD, threatens the owl's viability. The ROD claims that after 5 years of logging, "[s]ufficient options will remain at that time to adjust the course of managing spotted owls and their habitats." This conclusion is based on the FSEIS' viability analysis which predicts a "Very High" probability of population viability after 15 years of logging. In my expert opinion, the FSEIS' viability analysis is fundamentally flawed. *Even five more years of logging will most likely profoundly threaten the long-term viability of the spotted owl—in fact, too much owl habitat may already have been lost to ensure the owl's long-term survival.*

Exhibit P at 1-2 (emphasis added), attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD). Mr. Doak concludes:

> that the owl population will decline at even current habitat amounts. That is not to say that the situation today is hopeless. Rather, *my results warn that any further loss of owl habitat will severely compromise the owl's long-term viability.*

Id. at 3 (emphasis added).

b. Mr. Doak's analysis has been reviewed by Dr. Peter Kareiva, an Associate Professor of Zoology at the University of Washington and an expert in Mathematical and Population Biology. Dr. Kareiva states that:

> In my opinion, Mr. Doak's analysis is the best and most accurate analysis yet to be made of the spotted owl's viability.

Exhibit Q at 1, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD). Further, Dr. Kareiva is of the expert opinion that "[a]lthough all of the analyses are based on incomplete data, it is becoming clear that for all plausible estimates of dispersal rules and survivorship, and further logging will greatly reduce the owl's already perilous chances for persistence." *Id.* at 2.

c. Dr. Lande concludes, with respect to the Chief's decision and the FSEIS, that

> virtually all of the remaining spotted owl habitat must be protected in order to assure with reasonable probability the long-term viability of this species. I know of no scientific basis for concluding that further habitat loss will not jeopardize the viability of owl, as the ROD and FSEIS assert. All of the available evidence is to the contrary.

Exhibit R at 4, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD).

d. Dr. Gordon Orians reviewed both Dr. Lande's and Mr. Doak's analyses. In Dr. Orians opinion

> [it] is particularly significant that both researchers, using different methodologies, reach the same conclusion—preserving essentially all the remaining owl habitat is necessary to protect the long-term viability of the spotted owl protection. That both methods

> reach the same conclusion greatly strengthens the confidence we can have in it.

Exhibit S at 4, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD). Further, Dr. Orians notes that mistakes made now can have swift and irreversible consequences. "This is *not* a situation where incremental chipping away at the owl's habitat will cause incremental declines in the owl's population." *Id.* at 4-5.

e. Dr. Andrew Dobson, Assistant Professor of Biology at the University of Rochester and an expert on the population dynamics and life history strategies of birds, commented in regard to the DSEIS:

> I very much feel that the recommendations of the report are over-optimistic in their determinations of the owl's probability of persistence. . . It also seems likely that loss of habitat, through its effects on the recruitment function of the population, will affect the numbers of owls non-linearly. Thus *proportional declines in owl numbers may occur more rapidly than proportional losses of habitat.*

Exhibit T at 1, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD). Dr. Dobson concludes that the FSEIS is similarly flawed and endorses Dr. Lande's and Mr. Doak's analyses. *Id.* at 2.

29. Dr. Paul Ehrlich concurs with Mr. Doak's, Dr. Orians and Dr. Lande's conclusions. Thus Dr. Ehrlich states:

> I believe their conclusions regarding the risks to the owl's viability are reasonable on the basis of the existing scientific data. Though additional data would be useful, the existing information is sufficient to

> conclude that the northern spotted owl faces extinction if its habitat continues to be logged.

Exhibit U at 1, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD).

30. In summary, the expert scientific consensus that the spotted owl's viability and current population levels are jeopardized by *any* further loss of habitat stands in stark contrast to Chief Robertson's unsupported and unsupportable conclusion "that sufficient options will remain at the end of the 5 year period of this decision" to ensure the owl's viability. Exhibit A at 5.

THE FSEIS VIABILITY ANALYSIS IS FATALLY FLAWED AND CANNOT BE RELIED UPON TO CONCLUDE THAT THE OWL POPULATION FACES NO RISK FROM CONTINUED HABITAT LOSS.

31. The ROD's assertion that continued owl habitat destruction poses no risks to the owl's viability is based on the FSEIS' viability analysis. Every qualified and credible scientific review of the FSEIS' viability analysis has concluded that it is fatally flawed and discloses serious biological and mathematical errors.

32. Dr. Daniel Goodman, Professor of Environmental Biology at Montana State University and an expert in population dynamics, statistics and environmental modeling, was hired by the U.S. Department of Interior in 1987 to review the Forest Service's viability analysis. At that time he characterized the analysis as "vaguely impressionistic." Dr. Goodman noted that the DSEIS

> should be rejected on procedural grounds alone. If the description of the analysis is not sufficiently complete for a reviewer to reproduce the analysis, then it simply is not reviewable, and does not constitute an

adequate justification for any decision which claims to be based on it.

Exhibit V at 11, attached hereto.

33. Dr. Goodman's assessment upon review of the Final SEIS is even less generous. He criticizes the FSEIS for, *inter alia*:

a. obscuring the relationship between habitat loss and population declines, para. 3;
b. muddling the treatment of population dynamics by using incorrect formulae and, generally, displaying a "level of expertise adequate for failing any college course in population dymanics, para. 6;
c. providing no justification for arbitrarily increasing the immature survival rate in the simulation of the stochastic demography, para. 8;
d. botching the modeling of variation in life history parameters used in the stochastic simulation, para. 9;
e. either using an incorrect distribution for calculation of standard deviation, or not revealing what was in fact done to simulate variation, para. 10;
f. misusing the habitat capability index to conclude that patches less than one third the size of any observed to be used by a spotted owl pair will, in fact, support spotted owls, para. 11;
g. assuming, with no basis, that the pattern of patch size is a constant function of the fraction of the forest that is "suitable habitat" and that this pattern will continue to hold as the forest is logged, para. 12;
h. misinterpreting calculated probabilities of greater than 1 in the capability index as suggesting potential for supporting more than one pair when, in

fact, such impossible probabilities merely demonstrate that the calculations and sampling are incorrect, para. 14;

i. using the mathematical calculations of stochastic demography and inbreeding coefficients as "windowdressing" for justifying what turned out to be a subjective conclusion regarding viability "without a theoretical foundation," para. 17;

j. incorrectly asserting that there is no procedure for combining the factors that affect viability into one analysis, para. 19; and,

k. failing to come to grips with the uncertainty of the assessment by claiming ignorance as to how to account for it, para. 20.

Exhibit V at indicated paragraphs, attached hereto (submitted in support of plaintiffs' administrative appeal of the ROD).

34. In summary, Dr. Goodman concludes that the FSEIS viability analysis

> does not constitute a scientifically acceptable viability analysis. Quite the contrary, it is rife with elementary errors in statistics, mathematics and population dynamics. These errors are of sufficient magnitude to invalidate the conclusions of the entire process . . .

Id. at 3.

35. Mr. Daniel Doak finds major fault with the Forest Service's viability analysis. Mr. Doak points out that the FSEIS fails entirely to consider *the major threat* to the spotted owl's viability—the effect of habitat fragmentation from logging on the spotted owl population's ability to replenish itself over time. As a result, Mr. Doak concludes that the FSEIS "paints a considerably too rosy picture of the owl's viability." Exhibit P at 3.

36. Dr. Orians criticizes the FSEIS for not having "any scientific support for the agency's conclusion that the loss

of 4.5 percent of the remaining owl habitat will not contribute substantially to the long-term threat to the owl's viability." He adds two further criticisms:

a. there is no scientific support for the spacing criteria between spotted owl habitat areas, para. 15; and,

b. Alternative F's standards for amounts of suitable habitat in SOHAs do not appear to be based on existing scientific data regarding old-growth acreage required by spotted owl pairs, para. 16.

Exhibit S at indicated paragraphs.

37. In summary, the FSEIS viability analysis is seriously and fundamentally flawed in numerous respects. Neither it nor the ROD provides a rational basis to support the Chief's decision that further logging will not compromise the viability of the northern spotted owl or reduce its current population

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

VIOLATION OF THE NATIONAL FOREST MANAGEMENT ACT

1. The Chief's decision as set forth in the ROD does not assure that a viable population of northern spotted owls will be maintained in the Pacific Northwest, in violation of the National Forest Management Act, 16 U.S.C. § 1604(g)(3)(B) and its implementing regulations, 36 C.F.R. § 219.19. The Forest Service's violation of the NFMA is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(A).

SECOND CLAIM FOR RELIEF

VIOLATION OF THE MIGRATORY BIRD TREATY ACT

2. Taking, killing or otherwise harming spotted owls and/or their habitat on Forest Service lands violates the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.* and its implementing regulations, 50 C.F.R. § 10 *et seq.* The Forest Service's violation of the MBTA is subject to judicial review under 5 U.S.C. §§ 702, 706(2)(A).

THIRD CLAIM FOR RELIEF

VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

3. The Forest Service's FSEIS violates the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. § 1500 *et seq.*, because *inter alia*, the FSEIS:

a. failed to disclose all of the known and likely environmental consequences to the northern spotted owl of logging owl habitat for five years;

b. failed to acknowledge or assess the fundamental scientific uncertainty of its predicted environmental consequences on the spotted owl;

c. failed to acknowledge or respond to the overwhelming body of responsible scientific opinion that contradicts its conclusions.

4. The Forest Service's violations of NEPA in the FSEIS are subject to judicial review under 5 U.S.C. § 702, 706(2).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

A. Adjudge and declare that defendant's decision to select FSEIS Alternative F, as amended by the ROD, does

not assure the viability of the northern spotted owl and thus violates the NFMA and its implementing regulations.

B. Adjudge and declare that timber sales of suitable spotted owl habitat which result in the killing, taking or other harm to northern spotted owls and/or the owl's habitat violate the Migratory Bird Treaty Act and its implementing regulations.

C. Adjudge and declare that defendant's sales of suitable spotted owl habitat without an adequate environmental impact statement violate NEPA and its implementing regulations.

D. Adjudge and declare that defendants' actions as set forth above are arbitrary, capricious and not in accordance with law, contrary to 5 U.S.C. § 706(2)(A).

E. Adjudge and declare that defendants' actions as set forth above are not in compliance with procedures required by law, contrary to 5 U.S.C. § 706(2)(D).

F. Adjudge and declare that the defendants' ROD is null and void.

G. Order the Forest Service to comply with the requirements of NEPA, the NFMA and the MBTA, and until defendants do so, issue, as necessary, temporary restraining orders, preliminary and permanent injunctions restraining defendants from offering or awarding any contract for the sale and logging of timber from the Mount Baker-Snoqualmie, Olympic, Wenatchee, Gifford Pinchot, Okanogan, Mt. Hood, Siuslaw, Willamette, Umpqua, Siskiyou, Rogue River, Deschutes and Winema National Forests that will log more than forty (40) acres of suitable nesting or foraging habitat for northern spotted owls.

H. Award plaintiffs their reasonable fees, costs, expenses, and disbursements associated with this litigation.

I. Grant plaintiffs such additional and further relief as the Court may deem just and proper.

DATED: February 8th, 1989.

Respectfully submitted,

/s/ Victor M. Sher

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RECORD OF DECISION
USDA Forest Service

Amendment to the Pacific Northwest Regional Guide

Final Supplement to the
Final Environmental Impact Statement

* * * * *

SECTION 1: STANDARDS AND GUIDELINES

The *purpose* of Regional standards and guidelines for spotted owl habitat planning is to assure that individual Forest Land and Resource Management Plans meet the management requirement for insuring population viability (36 CFR 219.27(a)(6)). The standards and guidelines selected for Regional planning direction will be used by individual National Forests to assure that habitat is managed to maintain a viable population of spotted owls in the Region. These standards and guidelines provide planning direction to the National Forests. Management direction for specific locations within those forests will be determined in the Forest Plans.

The *expected result* of applying these standards and guidelines is to insure continued existence of a well-distributed population of spotted owls throughout the planning area. For purposes of spotted owl management, the planning area is composed of the 13 National Forests in the Pacific Northwest Region with spotted owl habitat (Figure 1). Specifically, standards and guidelines should ensure that:

1. appropriate kinds of forest stands are identified as suitable spotted owl habitat;
2. suitable habitat is provided in amounts and arrangements which meet annual or seasonal life needs of breeding pairs of spotted owls;

3. areas capable of supporting breeding pairs of spotted owls are distributed so that individuals can interact with others in the planning area, thus insuring a well-distributed population; and
4. the estimated number of reproductive individuals on each National Forest will contribute to a population throughout the Region that insures continued existence of the species.

Standard and Guideline 1. Amount of suitable habit in designated habitat areas.

The intent of this standard and guideline is to insure that breeding pairs in areas designated for spotted owls have sufficient habitat within their home ranges to meet overall life needs for survival and successful reproduction.

The amount of suitable spotted owl habitat at each designated habitat area will vary by physiographic province. The acreages should occur in at least one 300 acre stand of habitat that includes the nest site. Other habitats within 1.5 miles (Oregon) or 2.1 miles (Washington) of the nest site should be as contiguous as possible. The following amounts of suitable spotted owl habitat are to be designated per site:

Amount of Suitable Habitat to be Designated

Physiographic Province	National Forest	Amount of Habitat	Distance from Nest or Central Point
Olympic Peninsula	Olympic	3,000	2.1 mi.
Washington Cascades	Mt. Baker/Snoq.	2,200	2.1 mi.
	Okanogan	2,200	2.1 mi.
	Wenatchee	2,200	2.1 mi.
	Gifford Pinchot	2,200	2.1 mi.
Oregon Coast Range	Siuslaw	2,000	1.5 mi.

Amount of Suitable Habitat to be Designated—Cont'd

Physiographic Province	National Forest	Amount of Habitat	Distance from Nest or Central Point
Oregon Cascades	Mt. Hood	1,500	1.5 mi.
	Deschutes	1,500	1.5 mi.
	Willamette	1,500	1.5 mi.
	Umpqua	1,500	1.5 mi.
	Rogue River except Applegate District and west half of Ashland District	1,500	1.5 mi.
	Winema	1,500	1.5 mi.
Klamath	Siskiyou	1,000	1.5 mi.
	Rogue River Applegate District and west half of Ashland District		

Habitat areas may vary from the acreage objective if approved by the Regional Forester.

A habitat area may be larger than the acreage objective for suitable habitat if it meets at least one of the following two criteria:

1. The area contains more than one breeding pair of spotted owls, and it has been demonstrated that the reproductive rate, on average over time, has exceeded that necessary to replace the breeding adults.

2. The area is a key link in the network. A key link is defined as a spotted owl habitat area, which if not designated would result in a separation of the network contrary to spacing guidelines. Key links should be larger than the spotted owl habitat area acreage objective, especially where the local landscape contains little spotted owl habitat in lands unsuitable for

timber production or in reserved lands, and where the general forest landscape is heavily fragmented.

3. On the Olympic National Forest where the designated habitat areas shall average 3000 acres individual areas may be larger to compensate for those where less than the prescribed acreage is available.

Designated spotted owl habitat areas may contain less than the acreage objective for habitat where:

1. Breeding success within the previous two years has been documented and the amount and quality of spotted owl habitat has not declined significantly within the pair's home range during the previous two years.

2. The habitat area is necessary to meet spacing requirements and less than the suitable habitat acreage objective exists.

3. In addition, if acreage of suitable habitat is less than 1000 acres and meets one of the above criteria, potential habitat that will bring the total existing and potential habitat to 1000 acres shall be added.

Standard and Guideline 2. Spacing of designated habitat areas.

The intent of this standard and guideline is to insure that reproductive individuals are well distributed so they can interact with others in the planning area (the regional population). The ability to interact provides for recolonization of unoccupied habitats, interchange of genetic resources, and resilience of populations to normal fluctuations in births and deaths.

Distances between habitat areas within clusters of three or more spotted owl habitat areas shall be not more than 1.5 miles measured edge to edge.

Distances between clusters of three or more spotted owl habitat areas or between habitats in land unsuitable for

timber production that can support at least three pairs, shall be not more than 12 miles measured edge to edge except on the Olympic National Forest where they shall be not more than 8 miles.

Distances between all other habitat areas (cluster, single, or habitat area within land unsuitable for timber that could support at least one pair) shall be not more than six miles measured edge to edge except on the Olympic National Forest where they shall be not more than 2 miles.

Distances between spotted owl habitat areas may be extended 20 percent (that is, up to 7.2 miles for singles and 14.4 miles for clusters, or 2.4 miles and 9.6 miles respectively on the Olympic National Forest). This variation applies only where needed to locate a habitat area at a site with higher level of spotted owl occupancy (i.e., contains pair, rather than single bird) than would be otherwise available.

Each designated habitat area should link to at least three other areas within the spacing standards. These three other areas can be other designated spotted owl habitat areas, or suitable spotted owl habitat in lands unsuitable for timber production. A cluster is not considered to be three distinct areas for the purpose of this positioning.

Spacing standards apply across boundaries of adjacent National Forests. National Forests adjacent to other ownerships having suitable spotted owl habitat that will be maintained over time should provide habitats to help ensure distribution across ownership boundaries, and, as far as practicable, coordinate their efforts to identify and designate habitat areas. In this regard, other ownerships include, but are not restricted to, USDI Bureau of Land Management and USDI National Park Service.

Standard and Guideline 3. Threatened and Endangered Species.

No spotted owl habitat management activity shall adversely affect Federally listed threatened or endangered species or their habitats.

Standard and Guideline 4. Identification of suitable habitat.

The intent of this standard and guideline is to provide consistency and accuracy in identifying forest stand conditions that constitute suitable habitat for spotted owls. Its principal application will be in inventory, mapping, and monitoring to assure that the right kinds of habitat are being designated or counted as appropriate.

Vegetation types. Vegetation types in which spotted owl habitat occurs are:

Spruce/Cedar/Hemlock Forest
Cedar/Hemlock/Douglas-fir Forest
Mixed Conifer Forest
California Mixed Evergreen Forest
Silver fir/Douglas-fir Forest
Red fir Forest
Ponderosa Shrub Forest with White fir/Grand fir
Fir/Hemlock Forest
Grand fir/Douglas-fir Forest
Douglas-fir Forest

Stand structure. The following structural characteristics identify forest stands suitable for spotted owls. These conditions occur at different ages for each vegetation type and location, but in general they occur in stands considered to be mature and old growth.

a. Relatively large diameter of dominant trees in the stand.

b. Multi-layered canopy of trees with a moderate to high canopy closure in overstory, midstory, and understory layers.
c. Large, tall trees with cavities, broken tops, mistletoe, or platforms of branches capable of holding accumulated organic matter suitable for nesting.
d. Dead standing trees and fallen decayed trees to support abundant populations of prey species, especially northern flying squirrel and woodrat.
e. Stands with the above conditions and larger than 60 acres in area.

National Forests will specify the inventory and mapping criteria used to identify suitable spotted owl habitat in Forest planning, subject to approval by the Regional Forester.

Suitable habitat (vegetation types and structural or developmental stages) shall be identified in Forest Plans for inventory, mapping, and monitoring purposes in accordance with the general description above.

Standard and Guideline 5. Options for managing designated spotted owl habitat areas.

The intent of this standard and guideline is to provide consistency and efficiency in planning the management of forest stands within designated spotted owl habitat areas.

Spotted owl habitat can be provided by even-aged or unevenaged silviculture, or no scheduled harvest. Determination of the prescriptions selected will occur in the Forest Plans. Each National Forest will determine how spotted owl habitat is maintained through time.

Standard and Guideline 6. Criteria for locating designated habitat areas.

The intent of this standard and guideline is to designate spotted owl habitat areas without unnecessary restrictions

of other uses of the forest, to the extent possible while meeting the management requirement for spotted owl population viability. This standard and guideline shall be used on all spotted owl Forests in the Pacific Northwest Region.

1. Map spotted owl habitat in the following land use designations in each National Forest's Land and Resource Management Plan: lands withdrawn by Chief's authority or higher, other lands unsuitable for timber production, lands suitable for timber production with reduced yields and lands suitable for timber production with full yields.
2. Map the known locations of spotted owls on each Forest, and show locations of breeding pairs, pairs with verified non-breeding status or breeding status unknown, and other spotted owl sightings.
3. Identify areas in land unsuitable for timber production that have at least the specified acres of habitat within 1.5 miles from a central point in Oregon, and 2.1 miles from a central point in Washington.
4. Assess the distribution of habitat relative to spacing standards to determine if additional spotted owl habitat areas need to be designated. If designation is necessary, use mapped owl locations at the priorities for selecting spotted owl habitat areas in lands suitable for timber production.
5. Designate spotted owl habitat areas on lands suitable for timber production if needed to meet the spacing standard.
    a. If a verified breeding pair is located closer than six miles from the edge of lands unsuitable for timber production, or closer than two miles on the Olympic National Forest, then that area can

be designated if there are no verified breeding pairs within the adjacent lands unsuitable for timber production.

b. The preference is to provide spotted owl habitat areas in a cluster arrangement.

c. Use reduced yield lands before full yield lands where compatible with other criteria.

d. Use the following priorities in designating spotted owl habitat areas on lands suitable for timber production (listed in decreasing order of priority):

   1. Verified occupancy by breeding pairs within the last 5 years. If verification is not based on data from the current year, the site should meet or approximately meet Regional standards for habitat amounts and characteristics, or the habitat amounts and characteristics must have remained stable since the year of verification.
   2. Verified occupancy by breeding pairs more than 5 years ago. If verification is not based on data from the current year, the site should meet Regional standards for habitat amounts and characteristics, or the habitat amounts and characteristics must have remained stable since the year of verification.
   3. Verified occupancy by pairs; verified non-breeding, or breeding status or success unknown. If verification is not based on data from the current year, the site should meet or approximately meet Regional standards for habitat amounts and characteristics, or the habitat amounts and characteristics must have remained stable since the year of verification.

4. Presence of spotted owls; pair status unknown.
5. Areas with an appropriate amount of suitable owl habitat, within the radius prescribed, where the presence or absence of owls is unknown. An appropriate amount of habitat is that specified in Standard and Guideline 1. Amount of suitable habitat in designated areas.

Implementation of these standards and guidelines shall be achieved in a cost effective manner. Their application will result in designation of spotted owl habitat capable of supporting pairs of spotted owls through time. Table 1 displays the capability to support pairs of spotted owls which each National Forest with spotted owl habitat is to maintain for 15 years from the present. The Regional Forester will approve National Forest spotted owl habitat networks which result from the application of these standards and guidelines.

Supreme Court of the United States

No. 90-1596

F. DALE ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, ET AL., PETITIONERS

v.

SEATTLE AUDUBON SOCIETY, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 28, 1991.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

June 28, 1991

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